

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of the City of Santa Rosa for Approval to Construct a Public Pedestrian and Bicycle At-Grade Crossing of the Sonoma-Marín Area Rail Transit ("SMART") Track at Jennings Avenue Located in Santa Rosa, Sonoma County, State of California.

Application No. 15-05-014
(Filing Date: May 14, 2015)

**CITY OF SANTA ROSA REPLY COMMENTS
ON THE PROPOSED DECISION OF ALJ JEANNE M. MCKINNEY**

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Dated: August 15, 2016

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In accordance with Rule 14.3 of the Commission’s Rules of Practice and Procedure, the City of Santa Rosa (“City”) hereby respectfully submits its reply to the comments of the Safety and Enforcement Division (“SED”) on the Proposed Decision (“PD”) of Administrative Law Judge Jeanne M. McKinney. SED’s comments are a rehash of its conclusory testimony and legal arguments, all of which have been properly considered in the PD. The comments contain nothing new and do not, as required, demonstrate any factual, technical, or legal errors in the PD. More specifically, SED misrepresents the applicable Commission standard for determining the practicability of a grade-separated crossing.

The PD is comprehensive and well-reasoned. It fairly and accurately weighs the evidence of record. Its careful analysis of the significant safety-related issues at stake is factually and technically correct as well as legally sound. Consequently, the City again requests that the PD of ALJ McKinney be adopted by the Commission as is at the Commission’s August 18, 2016 business meeting.

I. THE PD PROPERLY APPLIES THE COMMISSION STANDARD FOR EVALUATING THE PRACTICABILITY OF A GRADE SEPARATION.

SED continues to cling to its patently erroneous interpretation of the Commission’s standard for evaluating the practicability of a grade-separated crossing. Despite SED’s misinterpretation to the contrary, the PD, reflecting express Commission precedent, correctly

establishes that the Commission evaluates seven criteria in determining the practicability of all at-grade crossings (light-rail transit, passenger railroad, and freight railroad).¹

In addition to the decisions cited in the PD, the Commission, on various other occasions, has affirmed that the seven-factor practicability test applies to all at-grade crossings (including light and heavy rail). Conclusion of Law No. 2 of D. 02-05-047 reads as follows:

Practicability embraces more than the concept of whether a crossing can be physically built. When making a judgment about practicability we must consider the effectiveness of safety measures, the analysis of our staff, the opinions of local civic and emergency authorities, the opinion of the public, and the cost of a separation in comparison with an at-grade solution.² (emphasis the added).

Decision 14-08-015 reflects the most recent Commission expression of the various parameters of the “practicability” test as embodied in Rule 3.7(c)(2). In affirmation of the PD’s reliance on D. 03-12-018, the Commission again states that its adopted practicability test, based upon evaluation of seven criteria, applies to “all at-grade crossing cases (light-rail transit, passenger railroad, and freight railroad).”³

Whether the Commission’s express statements are characterized as holdings or dismissed by SED as *dicta*, they indisputably reflect the Commission’s interpretation of the scope and applicability of its own rules. In light of repeated Commission confirmation that the seven-factor practicability test applies to all at -grade crossing applications, the Commission must reject SED’s disingenuous claim that there is a separate “practicability” test solely applicable to at-grade crossings of heavy-rail railroad tracks.

II. THE PD GIVES APPROPRIATE WEIGHT TO EACH OF THE SEVEN ELEMENTS OF THE COMMISSION’S PRACTICABILITY STANDARD.

It is the role of the presiding ALJ - not SED - to evaluate and determine the weight to be afforded to the evidence of record that has been presented. Notwithstanding SED’s self-serving evaluation of the weight to be afforded its own limited showing and its dismissive treatment of the extensive evidence in support of the City’s application, SED’s assertion that the ALJ has erred in weighing the evidence of record, i.e. abused her discretion, is wholly lacking in merit.

¹ PD AT P. 27, n. 52.

² *In the Matter of the Application of Los Angeles to Pasadena Metro Blue Line Construction Authority* (“Blue Line”), 2002 Cal. PUC LEXES 301, *13.

³ D. 14-08-045; 2014 Cal. PUC LEXIS 418, *15.

The Commission should ignore SED inflammatory and unsubstantiated claim that the City (and all who support the City's application), either intentionally or inadvertently, are placing the young and elderly at risk. A similar accusation could just as readily be lodged against SED and its failure to consider any of the risks that a grade-separated crossing poses for the young, the elderly and the disabled.

There is no guarantee that any crossing, whether at-grade or separated, can be made one hundred percent safe. The issue before the Commission is not whether the proposed at-grade crossing eliminates every potential safety hazard; rather, it is whether the public interest, giving paramount importance to safety issues, is better served by an at-grade crossing. Based upon full consideration of all issues, including extensive evidence regarding the safety of the proposed crossing, the PD correctly determines that the proposed at-grade bicycle and pedestrian crossing is in the public interest.

SED's recommendation, despite its apparent belief to the contrary, is not determinative of whether the Commission should approve the proposed at-grade crossing. Whatever weight the PD has given to SED's recommendation in evaluating the Commission's seven criteria for determining practicability is well within the discretion of the presiding ALJ.

SED is wrong in asserting that the PD establishes a negative precedent. Each crossing application, whether involving light or heavy rail, is subjected to independent evaluation by the Commission. While precedent may be relevant, it is but one of seven criteria considered by the Commission. The ability of the Commission to require a grade-separated crossing in future cases would in no way be compromised by adoption of the PD. Future Commission crossing-related decisions will be appropriately based on the weight of the evidence and reflect evaluation of the seven factors based upon the facts and circumstances unique to each case.

The PD properly gave consideration to the comparative costs of an at-grade crossing and a separated grade crossing consistent with the Commission's adopted criteria for evaluating practicability.

SED arguments alleging the continuing applicability of *City of San Marco* and associated claims that "practicability" is solely a function of whether a separated grade crossing can be physically constructed are belied by various subsequent Commission decisions.

III. CONCLUSION

The Proposed Decision should be adopted by the Commission as is at its August 18, 2016 business meeting.

Respectfully submitted on August 15, 2016 at San Francisco, California.

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By */s/ James D. Squeri*

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